

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**

**DOCKET NO. 2011-294-C, ORDER NO. 2012-\_\_\_\_\_**

In the Matter of the Application of Budget Prepay, Inc., d/b/a Budget Phone for Designation as a Non-Rural Wireless Eligible Telecommunications Carrier	)	<b>ORDER DESIGNATING BUDGET PHONE AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR THE PROVISION OF LIFELINE SERVICE</b>
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This matter comes before the Public Service Commission of South Carolina (the “Commission”) and concerns the above-captioned Application of Budget Prepay, Inc., d/b/a Budget Phone (“Budget”) for Designation as a wireless Eligible Telecommunications Carrier (“ETC”) in the State of South Carolina for the Limited Purpose of Offering Lifeline Service to Qualified Households that was filed on July 21, 2011 (the “Application”). In its Application, Budget sought designation as an ETC pursuant to §214(e)(2) of the Federal Communications Act of 1934, as amended (“Act”), solely to provide wireless services supported by the Federal Universal Service Fund’s (“USF’s”) Lifeline program. Budget did not seek authority to provide services supported by the USF’s high-cost program.

For the reasons explained in this Order, the Commission has concluded that the Application should be approved and that designation of Budget as a wireless ETC on the terms provided in this Order would serve the public interest.

**I. BACKGROUND**

Budget filed the Direct Testimony of David Donahue on September 14, 2011, and the

Supplemental Testimony of Mr. Donahue on July 17, 2012. On March 20, 2012, Budget supplemented its Application in response to the Federal Communications Commission's ("FCC") *Lifeline Reform Order*<sup>1</sup> and provided the Commission with a copy of the Compliance Plan that it submitted for approval by the FCC. On May 30, 2012, Budget advised the Commission that the FCC had approved Budget's Compliance Plan and granted forbearance from the "own facilities" requirement as provided by the *Lifeline Reform Order*. In addition, on July 9, 2012, Budget filed with the Commission a Stipulation entered into between Budget and the South Carolina Office of Regulatory Staff ("ORS") (the "Stipulation").

As directed by the Commission, notice of the filing of the Application was published and proof of publication provided to the Commission on August 15, 2011. No petitions to intervene were filed in this matter. ORS is a party pursuant to statute.

The Stipulation recommends that Budget be designated as a wireless ETC for the limited purpose of providing Lifeline service to qualified households in accordance with the terms of the Stipulation. A copy of the Stipulation is attached hereto as Appendix A.

On July 23, 2012, Budget filed a Motion for Expedited Approval, requesting that the Commission waive the hearing scheduled for August 23, 2012 at 10:30 a.m., admit certain prefiled testimony and exhibits into the record, grant expedited consideration of the application, and approve the Application. The ORS did not object to this motion. Having considered the record before it, the Commission finds that the record before it is sufficient to make a final determination in this matter and that the interests of judicial economy are served by waiving the hearing and granting expedited consideration.

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization, et al.* WC Docket No. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

## II. REQUIREMENTS FOR DESIGNATION

The purpose of an eligible telecommunications carrier designation is to further the public interest goal of ensuring that consumers in all regions, including those in rural, insular, and high cost areas, have access to telecommunications services comparable to those in urban areas.<sup>2</sup> An ETC is a common carrier designated by a state commission as eligible to receive federal universal service support.<sup>3</sup> State commissions derive this authority from 47 U.S.C. § 214(e)(2), and for the purposes of this Docket, the requirements for ETC designation in South Carolina are described under 26 S.C. Code Ann. Regs. 103-690(C)(a) (Supp. 2009), which further elaborates that a carrier seeking designation must offer and advertise the services enumerated under 47 C.F.R. § 54.101.

### A. Federal Requirements for ETC Designation

When Budget first filed its Application, the services contained in 47 C.F.R. §54.101 included: (1) voice grade access to the public switched telephone network; (2) local usage provided free of charge to end users; (3) dual tone multi-frequency signaling or its equivalent ("DTMF"); (4) single party service that allows, *inter alia*, a wireless user exclusive use of a dedicated message path for the length of a transmission; (5) access to emergency services, such as 911; (6) access to operator services for assistance with billing or the completion of a call; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low- income consumers. However, on November 18, 2011 and February 3, 2012 respectively, the FCC adopted the *USF/ICC Transformation Order*<sup>4</sup> and the *USF/ICC*

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<sup>2</sup> See 26 S.C. Code Ann. Regs. 103-690(A)(2) (Supp. 2009).

<sup>3</sup> See 47 C.F.R. § 54.201.

<sup>4</sup> *In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011 ("USF/ICC Transformation Order").

*Clarification Order*<sup>5</sup> which revised the eligibility requirements for ETC designation. Specifically, the FCC revised the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings by eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance. Additionally, the FCC: (1) required carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (2) eliminated the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (3) eliminated the requirement that Lifeline-only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

#### **B. State Requirements for ETC Designation**

26 S.C. Code Ann. Regs. 103- 690(C)(a)(1)(C) sets out particular conditions for those carriers only seeking federal USF support for participation in Lifeline programs. To satisfy these conditions, an applicant must:

- (1) Submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants;
- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, its ability to reroute traffic around damaged facilities, and its capability of managing traffic spikes resulting from emergency situations;
- (3) Demonstrate that it will satisfy applicable consumer protection and service quality standards;
- (4) Demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation;

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<sup>5</sup> *In the Matter of Connect America Fund, Order*, DA 12-147, released February 3, 2012 (“*USF/ICC Clarification Order*”).

- (5) Certify by affidavit signed by an officer of the company that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area;
- (6) Certify by affidavit signed by an officer of the company that it does offer or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (7) Certify by affidavit signed by an officer of the company that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

According to R. 103-690.1, ETCs participating in Lifeline programs must provide annual reporting information to the Commission and ORS by June 30 of each year and meet explicit requirements for administering these programs.<sup>6</sup> The annual reporting information, specified by R. 103-690.1(B)(b), requires the carrier to submit detailed statistical information about its customers, or potential customers, and make certain certifications about conducting the programs. Additionally, this regulation requires the carrier to submit copies of responses to the Lifeline Verification Survey or Certification filed with the Universal Service Administrative Company on August 31st of each year.

As specified in R. 103-690.1(E)(a), ETCs shall offer Lifeline to all qualifying low-income residents in the designated service area as follows:

- (1) ETCs shall publicize the availability of the service in a manner reasonably designed to reach those likely to qualify for the service;
- (2) ETCs shall commit to offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to

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<sup>6</sup> For wireless carriers, the annual report must contain a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Services. For other ETCs, the annual report must contain a commitment that they meet the service quality standards of R. 103-663.

- receive toll limitation service, that service becomes part of that consumer's Lifeline service;
- (3) ETCs may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll limitation service from the carrier where available;
- (4) ETCs shall verify annually that their Lifeline customers meet the program qualification;
- (5) ETCs shall notify Lifeline subscribers a minimum of 60 days prior to termination of their service if the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline qualifying criteria; and
- (6) ETCs shall not charge Lifeline customers a monthly number portability charge.

### **III. ANALYSIS**

#### **A. Eligibility and Service Area**

Budget is a common carrier as that term is defined in the Act<sup>7</sup> and, as such, is eligible for designation as an ETC. Further, Budget has received ETC status in South Carolina for its wireline services.

Section 214(e)(2) of the Act provides that ETC designation shall be made for a “service area” designated by the state commission. Section 214(e)(5) of the Act provides that the “service area” shall be a “geographic area established by the State commission.” Budget seeks ETC designation in the wire centers of the non-rural ILECs in South Carolina, which are listed in

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<sup>7</sup> 47 USC §153(11); *see also* 47 C.F.R. § 20.9.

Exhibit A to Budget's Application in this Docket. No party opposes Budget's service area designation.

**B. Compliance with Federal Requirements for ETC Designation**

Section 214(e)(1)(A) of the Act requires that an ETC offer the services that are supported by federal universal service support mechanisms ("Supported Services") either using its own facilities or a combination of its own facilities and resale of another carrier's services. On May 25, 2012, the FCC granted Budget forbearance from the "own facilities" requirement contained in section 214(e)(1)(A) of the Communications Act and in 47 C.F.R. § 214(e)(1)(A), consistent with the FCC's determination to forbear from applying the "own facilities" requirement to Low Income-only (*e.g.*, Lifeline) ETC applications that comply with the conditions set forth in the FCC's *Lifeline Reform Order*. The conditions imposed by the FCC in exchange for its grant of forbearance are set out in Budget's FCC-approved Compliance Plan.<sup>8</sup> The Compliance Plan is an exhibit to the Stipulation, which is attached to this Order as Appendix A.

The Record demonstrates that upon designation as a wireless ETC in South Carolina, Budget will provide the required services pursuant to the *Lifeline Reform Order* and 47 C.F.R. § 54.101 as follows:

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<sup>8</sup> See *Wireline Competition Bureau Approves the Compliance Plans of American Broadband & Telecommunications, Budget PrePay, Consumer Cellular, Global Connection, Terracom and Total Call*, FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-828 (rel., May 25, 2012) (attached).

- 1) Voice-grade access to the public switched telephone network.
- 2) Local usage.
- 3) Access to Emergency Services.
- 4) Toll Limitation For Qualifying Low-Income Consumers.

In addition, Budget supplemented its Application with a copy of its Compliance Plan demonstrating that it is financially and technically capable of providing Lifeline service, and that it will comply with other requirements of the *Lifeline Reform Order*, including: the FCC's revised verification and certification requirements; the uniform \$9.25 per month federal reimbursement of the Lifeline discount; specific disclosures in advertising and outreach; processes for determining initial and ongoing eligibility; and reporting and compliance obligations. Further, in its supplemental filing, Budget explained the terms and conditions of its various Lifeline offerings.

### **C. Compliance With 26 S.C. Code Ann. Regs 103-690**

Budget seeks ETC designation only for the purpose of participating in the low-income support component of the federal USF (the Lifeline program) in its service area, and does not seek designation for the purpose of receiving high cost support from the federal USF. As an ETC, Budget will offer telecommunications service to customers who are eligible for Lifeline support and will use federal USF support funds only for that purpose. This service offering will be competitive with those of ILECs serving the requested area and afford eligible South Carolinians in the affected service area a choice in their Lifeline service.



In order to meet the requirements of 26 Code Ann. Regs. 103- 690(C)(a)(1)(A), Budget has committed to provide service throughout the proposed designation area to all qualifying customers making a reasonable request for service.

(1) Two Year Plan:

Budget's two-year plan, described in its prefiled testimony, meets the requirements of R. 103-690(C)(a)(1)(C)(1) by describing its plans for advertising and its outreach programs for identifying, qualifying, and enrolling eligible participants in its Lifeline programs. Budget will advertise its Lifeline services through a combination of in-store marketing, direct mail, print media, press releases to governmental agencies, and other media channels such as television, radio, newspaper, outdoor advertising and the Internet.

(2) Ability to Remain Functional During Emergencies:

Mr. Donahue testified that because Budget will lease facilities from one or more facilities-based wireless carriers (Verizon and/or Sprint) to serve its customers, Budget has the same ability to remain functional in emergency situations as those carriers. Likewise, those carriers' networks have reasonable amounts of back-up power to ensure functionality without an external power source, and have implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. The Commission finds that Budget has the ability to remain functional during emergencies.

(3) Consumer Protection and Service Quality Commitment:

Pursuant to 26 Code Ann. Regs. 103-690(C)(a)(1)(C)(3), Budget has committed to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Code").

(4) Local Usage Plan:

Budget's local usage plan meets the requirements of R. 103-690(C)(a)(1)(C)(4). As Mr. Donahue testified, Budget will provide a certain amount of service free of charge, will not impose a local call area, and will offer its Lifeline customers a variety of other features at no cost.

(5) Equal Access Obligation:

Complying with R. 103-690(C)(a)(1)(C)(5), The Company submitted an affidavit, attached as Exhibit B to the Application, which acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications designation is sought.

(6) Facilities:

Complying with R. 103-690(C)(a)(1)(C)(6), the Company submitted an affidavit, attached as Exhibit 1 to the Application, which acknowledges that it offers services that are supported by the federal USF low-income support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services. However, as described above, the FCC has granted Budget forbearance from the "own facilities" requirement, in exchange for the terms to which Budget has agreed in its Compliance Plan. Likewise, the Commission grants Budget forbearance from any "own facilities" requirement found in R. 103-690(C)(a)(1)(C)(6), subject to Budget's compliance with the Stipulation and the terms of its Compliance Plan.

(7) Advertisement of Services:

Complying with R. 103-690(C)(a)(1)(C)(7), Budget Phone submitted an affidavit, attached as Exhibit B to the Application, which acknowledges that it will advertise through media of general distribution the availability of, and applicable charges for, the services supported by the USF low-income support mechanism.

**D. ETC Designation is in the Public Interest**

Low-income support from the federal USF to provide the Lifeline program is designed to reduce the monthly cost and increase the availability of telecommunications services for eligible customers. This cost reduction is distributed on a household basis and directly affects the price that an eligible customer pays. Budget has demonstrated that all USF support it receives will be used to provide Lifeline service to consumers, thus promoting the availability and affordability of telephone service to low-income users.

In the Commission's view, the additional designation of Budget as a wireless ETC will increase consumer choice for low-income customers eligible for Lifeline support in the areas requested. Customers who can obtain these telecommunications services will likely benefit from additional rate plan options and increased access to emergency services. Therefore, subject to the commitments and conditions discussed in this Order, the Commission concludes that Budget has shown that its designation as a wireless ETC is in the public interest, for its proposed ETC designated area.

As demonstrated in the Application, the Testimony, the Stipulation, and the company's Compliance Plan (filed with the Commission and included as part of an exhibit to the Testimony), Budget Phone satisfies all the relevant requirements for designation as an ETC specified in Sections 254 and 214 of the Act and 26 S.C. Code Ann. Regs. 103-690.

In the *Lifeline Reform Order*, the FCC adopted specific reforms attempting to limit fraud, waste and abuse in the low-income program. Budget Phone commits to compliance with the rules as they are applicable.

Section 103-690C(b) of the S.C. Code Reg. provides that in determining whether an ETC designation is in the public interest the Commission must consider, *inter alia*, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.

Considering these factors and others, the Commission determines that it is in the public interest that the Commission grant Budget Phone wireless ETC designation for the limited purpose of providing Lifeline service.

### **FINDINGS AND CONCLUSIONS**

1. The prefiled testimony and Stipulation are accepted into the record without objection;
2. Since this matter is uncontested and ORS does not oppose the Application, Expedited Review should be granted as contemplated by S.C. Code Ann. § 1-23-320(F);
3. Budget meets all federal and state requirements for designation as an ETC in the proposed areas where it seeks designation;
4. Granting this Application furthers the goals and purposes of Section 254 of the Telecommunications Act of 1996 in that access to the federal Universal Service Fund will ensure Lifeline support to qualifying customers; and
5. Granting this Application is in the public interest.

**IT IS THEREFORE ORDERED THAT:**

1. Expedited review is granted.
2. Budget is hereby designated as an ETC, as of the effective date of this Order and in the requested areas, for the limited purpose of providing Lifeline service as requested in the Application on the terms provided in the Stipulation. A copy of this order shall be promptly provided by the Commission to the FCC and the Universal Service Administrative Company.
3. Budget shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.
4. All federal USF funding received as a result of this Order shall be used to provide Lifeline support for low-income customers.
5. Budget shall meet the reporting and certification requirements for ETCs as outlined by the *Lifeline Reform Order* and 26 S.C. Code Ann. Regs. 103-690.1, and file the annual reporting information with the Commission no later than June 30 of each year. A copy of this report shall be provided to the ORS.
6. Budget shall administer the Lifeline program in conformity with 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.101 *et seq.*, and 26 S.C. Code Ann. Regs 103-690.1(E)(a).
7. Should the Commission determine that Budget has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes or regulations, the Commission may deny Budget's annual recertification as an ETC.
8. This Order shall remain in full force and effect until further Order of the Commission.

August 27, 2012

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**BY ORDER OF THE COMMISSION:**

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David A. Wright, Chairman

ATTEST:

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Randy Mitchell, Vice-Chairman

(SEAL)